WING FAH ENTERPRISE SDN BHD

v.

MATSUSHITA ELECTRONIC COMPONENTS (M) SDN BHD

COURT OF APPEAL, PUTRAJAYA
RAMLY ALI JCA
ZAHARAH IBRAHIM JCA
ANANTHAM KASINATHER JCA
[CIVIL APPEAL NO: B-02-136-2011]
20 MAY 2014

CONTRACT: *Breach - Allegation of - Respondent contracted to sell waste scrap metals to appellant - Respondent ceased sales of scrap metals upon discovering appellant did not hold licence under Second-Hand Dealers Act 1946 - Whether scrap metals were second-hand goods - Whether appellant required licence - Whether transaction between respondent and appellant illegal and void*

The respondent was a manufacturer of electronics products. The metal raw materials which did not end up in the final products produced were disposed of as scrap metals and sold to buyers, one of which was the appellant. The respondent informed the appellant that the latter was required to maintain the quoted purchase price for three years, which was confirmed by the appellant. A number of transactions took place between the respondent and the appellant until the respondent informed the appellant that it would cease all sales of scrap metals to the appellant. The reason given was that the respondent discovered that the appellant did not hold a licence under the Second-Hand Dealers Act 1946 ('the Act'). The appellant sued the respondent for breach of contract. The High Court, in dismissing the appellant's claim against the respondent for breach of contract, found that the scrap metals were goods which had been used and were therefore "second-hand goods" within the ambit of the Act and that the lack of licence under the Act rendered the transactions between the appellant and the respondent illegal and therefore void under the Contracts Act 1950. The appellant thus appealed to this court against that decision.

Held (allowing appeal with costs)
Per Zaharah Ibrahim JCA delivering the judgment of the court:

(1) The scrap metals were off-cuts/waste materials being raw materials which did not go into the finished products in a manufacturing process. They could not possibly be goods which had been used. The metals which go into the products were used, but surely not those portions/buts which were not and were discarded. As scrap metals such as those sold by the respondent to the appellant were not "second-hand" goods, the appellant did not require a licence under the Act to purchase them from the respondent. (paras 24, 25 & 26)

(2) From the provisions of the Act as a whole, and in particular ss. 3, 6, 7, 8, 10, 13, 14, 15 and 16, it was clear that the purpose of the Act was to create a mechanism to prevent the use of transactions in second-hand goods as a means of receiving and disposing of stolen property. A dealer whose business was the purchase of scrap metals direct from the producer of the scrap metals, and who then supplied those scrap metals to other manufacturers, could not be a dealer who was the target of the Act. And that was precisely what the appellant's business was. (paras 36, 37 & 38)

Bahasa Malaysia *Translation Of Headnotes*

Responden adalah pengeluar barangan elektronik. Bahan-bahan mentah logam yang tidak digunakan dalam produk akhir yang dihasilkan telah dilupuskan sebagai besi serpihan dan dijual kepada pembeli, yang satu daripadanya adalah perayu. Responden telah memaklumkan kepada perayu bahawa perayu perlu mengekalkan harga belian untuk tiga tahun, yang telah disahkan oleh perayu. Beberapa transaksi telah berlangsung di antara responden dan perayu sehingga responden memberitahu perayu bahawa ia akan menghentikan semua jualan besi serpihan kepada perayu. Alasan yang diberikan adalah bahawa responden mendapati yang perayu tidak memegang lesen di bawah Akta Peniaga Sekendhend 1946 ('Akta'). Perayu mengambil tindakan terhadap responden kerana telah melanggar kontrak. Mahkamah Tinggi, dalam membatalkan tuntutan perayu terhadap responden untuk pelanggaran kontrak, mendapati bahawa besi serpihan adalah bahan-bahan yang telah digunakan dan dengan itu adalah 'bahan-bahan terpakai' dalam

maksud Akta dan ketiadaan lesen di bawah Akta membuatkan transaksi di antara perayu dan responden taksah dan terbatal di bawah Akta Kontrak 1950. Perayu dengan itu merayu ke mahkamah ini terhadap keputusan tersebut.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Zaharah Ibrahim HMR menyampaikan penghakiman mahkamah:

(1) Besi serpihan adalah bahan-bahan buangan iaitu bahan-bahan mentah yang tidak digunakan untuk produk akhir yang dihasilkan dalam proses pengeluaran. Ia bukanlah bahan-bahan yang telah digunakan. Besi-besi yang termasuk dalam produk adalah digunakan, tetapi bukan bahagian yang tidak dipakai dan dibuang. Oleh kerana besi-besi serpihan seperti yang dijual oleh responden kepada perayu bukanlah bahan-bahan "terpakai", perayu tidak memerlukan lesen di bawah Akta untuk membelinya daripada responden.

(2) Daripada peruntukan Akta secara keseluruhan, dan khususnya ss. 3, 6, 7, 8, 10, 13, 14, 15 dan 16, adalah jelas bahawa tujuan Akta adalah untuk mewujudkan mekanisme bagi mengelak penggunaan transaksi bahan-bahan terpakai sebagai satu cara menerima dan melupuskan harta curi. Seorang peniaga yang perniagaannya membeli besi-besi serpihan terus daripada pengeluar, dan membekalkan besi-besi serpihan itu kepada pengeluar-pengeluar lain, bukanlah peniaga yang menjadi sasaran Akta. Dan perniagaan tersebut adalah apa yang diniagakan oleh perayu.

Case(s) referred to:
Lau Hee Teah v. Hargill Engineering Sdn Bhd & Anor [1979] 1 LNS 40 FC ***(refd)***

Legislation referred to:
Second-Hand Dealers Act 1946, ss. 3, 6, 7, 8, 10, 13, 14, 15, 16
Interpretation Acts 1948 and 1967, s. 17A

For the appellant - M Edmund; M/s Oh Teik Keng & Partners
For the respondent - Kevin Prakash; M/s Mohanadass Partnership

[Editor's note: For the High Court judgment, please see Wing Fah Enterprise Sdn Bhd v. Matsushita Electronic Components (M) Sdn Bhd [2011] 8 CLJ 111.]

Reported by Suhainah Wahiduddin

A

JUDGMENT

Zaharah Ibrahim JCA:

Background Facts

B **[1]** The undisputed facts are that the respondent is a manufacturer of electronics products. In the production of the products, miscellaneous metal raw materials are used, including brass, copper, nickel silver and aluminium.

C **[2]** Naturally not all the metal raw materials used end up in the final products produced. The waste metal materials are disposed of as scrap metals, and usually sold to buyers. The appellant was one such buyer.

D **[3]** The appellant responded to the respondent's letter dated 28 June 2004 inviting the appellant to submit a quotation for the purchase of scrap metals (identified in the High Court as P1 to P6), by submitting, on 29 June 2004, its quotation of its proposed purchase price of the scrap metals offered for sale by the respondent.

E **[4]** By letter dated 1 July 2004, the respondent informed the appellant that the latter was required to maintain the quoted purchase price for three years and requested the appellant to confirm by 2 July 2004 that it would do so.

F **[5]** This confirmation was given by the appellant by its letter dated the same date 1 July 2004).

[6] The respondent subsequently informed the appellant by letter G dated 5 July 2004 that it had been selected to purchase the scrap metals. The appellant was also reminded to follow the rules and regulations "of government requirement".

[7] The respondent then sold the scrap metals to the appellant.

H **[8]** A number of transactions took place until the respondent by letter dated 29 December 2004 informed the appellant that it would cease all sales of scrap metals to the appellant. The reason given was that the respondent found out that the appellant did not hold a licence under the Second-Hand Dealers Act 1946 I (Act 189).

[9] The appellant then sued the respondent for breach of contract.

[10] On 25 November 2010 the High Court dismissed the appellant's claim against the respondent for breach of contract with costs of RM15,000.

[11] The appellant appeals to this court against that decision.

The High Court Findings

[12] The findings and conclusions of the learned High Court Judge, in summary, are as follows:

(a) there was a concluded contract between the appellant and the respondent;

(b) the scrap metals are goods which have been used and are therefore "second-hand goods" within the ambit of Act 189;

(c) the act of "dealing" includes the act of buying and thus falls under the scope of Act 189;

(d) the respondent cannot "waive" the requirement of a licence under Act 189;

(e) the lack of a licence under Act 189 renders the transactions between the appellant and the respondent illegal and therefore void under the Contracts Act 1950.

Decision

[13] Before us, Mr Prakash for the respondent conceded that the existence of a contract is not disputed.

[14] We agree with the learned High Court Judge that there was a concluded contract. That, in any case, is not disputed by the respondent.

[15] We agree with the learned High Court Judge that the act of dealing includes the act or buying or purchasing.

[16] We also agree with the learned High Court Judge that the respondent cannot waive a statutory requirement.

[17] We further agree that where the performance of a contract becomes illegal for contravention of a statutory provision, that contract becomes void.

Issue

[18] The only issue before us is therefore whether the contract is void for illegality on the ground that the appellant did not have a licence under Act 189 to purchase the scrap metals from the respondent.

Analysis Of Issue

Section 6: Licence Requirement

[19] The provisions of Act 189 requiring a licence for a person who deals in second-hand goods are found in s. 6 of that Act which reads as follows:

> 6. No person unless exempted from this section shall deal in second-hand goods except in accordance with the conditions of a licence issued under this Act in the form in the First Schedule, and in the place specified in the licence:
>
> Provided that any person who deals exclusively in the goods specified in the Second Schedule or any of them may be granted a licence in the form in the Third Schedule. Sections 7, 12, 13, 15 and 16 shall not apply to such licensee, nor need the licence specify his place of business, but every such licensee shall carry his licence on his person and shall produce the same for inspection at any time on demand by any police officer.

Second-hand Goods

[20] Act 189 does not define the term "second-hand goods". We agree with the learned High Court Judge that the scrap metals sold by the respondent to the appellant are goods. But, the material question is: are they second-hand goods?

[21] *The Concise Oxford English Dictionary*, 11th Edition, Revised, defines "second-hand", in relation to goods, as follows:

> second-hand adj. & adv. 1 (of goods) having had a previous owner, not new ...

[22] No cases were referred to us to assist us in arriving at the answer to that question, except the case of *Lau Hee Teah v. Hargill Engineering Sdn Bhd & Anor* [1979] 1 LNS 40; [1980] 1 MLJ 145 which was cited by both parties. The learned High Court Judge, relying on that case, concluded that "second-hand" means "has been used when offered for sale".

[23] In *Lau Hee Teah*'s case, the subject matter was a loader taken under a hire-purchase agreement. The loader developed problems and the hirer sued the dealer as well as the owner, claiming, among other things, that they had made certain fraudulent misrepresentations to him which induced him to enter into the hire-purchase agreement. One such misrepresentation was that the loader was new. In the High Court, His Lordship Wan Hamzah J said (at p. 146):

> ... I accept the evidence and submission on behalf of the defendants that their employees by stating that it was new meant that it had not been sold previously and it was not second-hand. "Second-hand" means "has been used when offered for sale". I hold that if the loader had been regularly used as a demonstration machine, it would have been second-hand. There is no evidence that the loader had been regularly used for demonstration purposes although it is not disputed by the defendants that it had been used once for demonstration. I do not think that it can be described as second-hand merely because it had been used once for demonstration."

The Federal Court agreed with Wan Hamzah J's conclusions.

[24] In the case before us, the scrap metals were off-cuts/waste materials being raw materials which did not finally go into the finished products in a manufacturing process. In our considered view, they cannot possibly be goods which have been used. The metals which go into the products are used, but surely not those portions/bits which are not and are discarded.

[25] Even if it can be said that scrap metals are "used" when they go through the manufacturing process, the decision in *Lau Hee Teah*'s case clearly shows that these do not make the scrap metals "second-hand".

[26] As scrap metals such as those sold by the respondent to the appellant are not "second-hand" goods, the appellant did not require a licence under Act 189 to purchase them from the respondent.

A *Dealers Required To Be Licensed*

[27] It is trite that the provisions of a statute must not be read in isolation of each other. A statute must be construed as a whole in order to give effect to the purpose for which it was enacted.

B

[28] The dealers that are the target of Act 189 are clearly dealers who buy (and sell) second-hand goods from any member of the public who chooses to sell (or buy) the goods. The dealer may either operate from fixed premises (shop) or he may be an itinerant dealer. The latter is a dealer who buys/sells only the goods listed
C in the Second Schedule to Act 189.

[29] Licences issued to dealers operating from shops will have to specify the address of the premises at which they are licensed to buy/sell the second-hand goods. These licences are in the form
D prescribed in the First Schedule to Act 189.

[30] Before a licence is issued, s. 10 of Act 189 requires the fingerprints of the person applying for a licence to be taken by the licensing officer (who, under s. 3, is the State Chief Police Officer
E or any person to whom he has deputed his powers under the Act).

[31] Under s. 7 of Act 189, a licensed dealer must keep his licence posted in a conspicuous place in his shop, and must display at or over the outer door of his shop a sign-board bearing
F the words "Licensed Dealer in Second-Hand Goods".

[32] Under s. 8 of Act 189, a licensed dealer is prohibited from receiving, buying, selling or delivering any goods between 7pm and 7am.

G

[33] An itinerant second-hand dealer is required by the proviso to s. 6 to carry the licence issued to him on his person and must produce the licence for inspection at any time on demand by any police officer.

H

[34] The reasons for the requirements we have mentioned in paras. 30, 31, 32 and 33 above are made clear from a reading of ss. 13, 14, 15, and 16 of Act 189.

I

[35] In our considered view, reading the provisions of Act 189 as a whole, and in particular ss. 3, 6, 7, 8, 10, 13, 14, 15 and 16 of Act 189, it is clear that the purpose of Act 189 is to create a mechanism to prevent the use of transactions in second-hand goods as a means of receiving and disposing of stolen property.

[36] In interpreting an Act of Parliament, we are obliged, under s. 17A of the Interpretation Acts 1948 and 1967 (Act 388), to prefer a construction "that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not)" over a construction that would not promote that purpose or object.

[37] A dealer whose business is the purchase of scrap metals direct from the producer of the scrap metals, and who then supplies those scrap metals to other manufacturers, cannot be a dealer who is the target of Act 189. And that was precisely what the appellant's business was.

[38] The appellant purchased the scrap metals from the respondent to supply to its business partner, Press Metal Berhad to help the Press Metal Berhad meet their "huge amount of scrap metal requirement for their increasing production needs". This was made clear by the appellant to the respondent when they put in their tender application by letter dated 29 June 2004.

[39] In our view, based on the considerations set out above, the purchase of the scrap metals by the appellant from the respondent does not require the appellant to be licensed under Act 189.

Conclusion

[40] We are therefore unanimous in our view that the learned High Court Judge erred in her findings and conclusions that the contract between the appellant and respondent was void for illegality.

[41] We therefore allow this appeal with costs and set aside the decision of the High Court.

[42] We order that costs in the sum of RM10,000 be paid by the respondent to the appellant, and that the deposit be refunded.